



**The Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Viktoria F.I.T., GmbH
File: B-233125, B-233126, B-233127
Date: January 24, 1989

DIGEST

Protest that offeror did not receive amendments to solicitations until after the time set for closing is denied absent evidence that the failure resulted from a deliberate attempt on the part of the agency to exclude firm. Record shows that misaddressing of amendments was due merely to agency inadvertence and that protester and agency were not aware of mailing error until after the offer closing time.

DECISION

Viktoria F.I.T., GmbH protests the rejection of its offers under request for proposals (RFP) Nos. DAJA16-88-R-0120 (RFP 0120), DAJA16-88-R-0121 (RFP 0121), and DAJA16-88-R-0122 (RFP 0122), issued by the Department of the Army for the acquisition of local drayage (hauling) services in Grafenwoehr, West Germany. Viktoria argues that the Army improperly rejected its offer for failure to acknowledge and respond to amendments which it argues it did not receive because of agency "gross negligence" in sending the amendments to the wrong address.

We deny the protests.

The agency admits that certain contracting officials were advised of the name change and new address of the protester prior to issuance of these solicitations; however, the solicitation and amendments were mailed to the wrong address, the firm's prior address, because the bidder's

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mailing list for the item was not updated. The agency thus asserts the error in mailing the amendments to the wrong address was simply an inadvertent one.^{1/} As a result, Victoria did not receive the amendments until after the RFP closing dates.^{2/} The Army reports the error in its records has subsequently been corrected. The Army also notes that it received adequate competition on all three solicitations; four technically conforming offers were received in response to RFP 0120, three in response to RFP 0121, and four in response to RFP 0122. The Army reports that it obtained reasonable prices in line with its estimates for the work.

The protester argues that the agency's improper addressing of the amendments shows either "gross negligence" or "intentional disregard" of the firm's ongoing business relationship with the Army. Viktoria points out that it has held previous contracts with the contracting activity in question, that it has previously received correspondence from the agency at its current, correct address, and that the agency was aware of its interest in this work.

An offeror bears the risk of not receiving a solicitation amendment unless it is shown that the contracting agency made a deliberate effort to exclude the firm from competing, or that the agency failed to furnish the amendment inadvertently after the firm availed itself of every reasonable opportunity to obtain the amendment. See REL, B-228155, Jan. 13, 1988, 88-1 CPD ¶ 25; American Sein-Pro, B-231823, Aug. 31, 1988, 88-2 CPD ¶ 209. Thus, for example, we sustained a protest where the agency inadvertently did not provide a firm with solicitation amendments despite the firm's repeated attempts to obtain copies. See, e.g., Catamount Construction, Inc., B-225498, Apr. 13, 1987, 87-1 CPD ¶ 374. Our rationale for sustaining a protest in the latter circumstance is that the standard of full and open competition, under the Competition in Contracting Act of 1984, 10 U.S.C. § 2302(3); 41 U.S.C. § 403(7) (Supp. IV 1986), requires that an agency take steps to ensure the

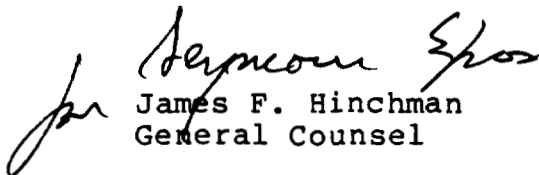
^{1/} We note that the contracts are for work to be performed outside the United States, and, thus, all three RFPs were exempt from the requirement for synopsis in the Commerce Business Daily. See Federal Acquisition Regulation (FAR) § 5.202(a)(12) (FAC 84-28). We also note that there is no dispute regarding the materiality of the amendments.

^{2/} The record indicates that the protester obtained the solicitations either by mail or hand, and submitted offers based on the unrevised solicitations.

solicitation materials are made available to all responsible sources. Where a bidder or offeror avails itself of every reasonable opportunity to obtain the documents, and the agency fails to provide the documents, the agency may be found to have effectively denied the prospective bidder or offeror an opportunity to compete, in violation of the requirement for full and open competition. See Trans world Maintenance, Inc., 65 Comp. Gen. 401 (1986), 86-1 CPD ¶ 239.

Here, the protester does not allege, and the record does not show, any deliberate attempt to exclude the protester from the competition. The record merely reflects inadvertence on the part of the Army. While the protester's correct address and new trade name were known to certain personnel within the activity, this information was not communicated to the personnel responsible for mailing these three RFPs, who relied on a mailing list which had not been updated. Further, there is no evidence that the protester or agency was aware of the mailing error until after the closing date for submission of offers. Thus, it is not a case where the agency precluded the protester from competing by mishandling repeated timely requests for the amendments. Finally, the record shows that adequate competition at reasonable prices was obtained.

Consequently, the protests are denied.


James F. Hinchman
General Counsel